

**CITY OF LONG BEACH
PURCHASE ORDER - GENERAL CONDITIONS**

1. Issuance of this Purchase Order by the City constitutes acceptance of Supplier's offer on the terms and conditions stated herein, and forms a contract.
2. City will not pay charges for taxes, transportation, boxing, packaging, crating or returnable containers unless separately stated hereon. All sales, use, excise or similar taxes to be paid by the City must be itemized separately hereon and on invoices. The City is exempt from payment of Federal Excise Tax under Certificate Number 95-730502K and supplier shall not charge this tax to the City.
3. City's obligation to pay the sum herein stated for any one fiscal year shall be contingent upon the City Council appropriating the necessary funds. A fiscal year commences on October 1 and ends on September 30 of the following year. If the City Council fails to appropriate the necessary funds for any fiscal year, then the Purchase Order shall terminate at no additional cost or obligation to the City.
4. Supplier shall furnish the labor, goods, materials, equipment, supplies ("items") or services, or cause the work to be performed, within the time and in the manner specified in the Purchase Order. Times and dates stated herein are of the essence. If at any time the Supplier believes that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay shall be given immediately to the City. Deliveries must be prepaid. City will not accept COD shipments.
5. City reserves the right at any time to make changes in drawings and specifications, in methods of shipment and packaging, and in place(s) of delivery for any items in this Purchase Order. In such event, there will be made an equitable adjustment in price and time of performance mutually satisfactory to the Supplier and the City; but any claim by the Supplier for such an adjustment must be made in writing within thirty days after such change.
6. Supplier warrants that the items delivered or the work performed hereunder shall conform to the specifications, drawings, samples or other description specified by the City and shall be fit and sufficient for the purpose intended, merchantable, of good materials and workmanship, in good working order and free from defect or faulty workmanship for a period of at least ninety days. When defective items or faulty workmanship is discovered which requires repair or replacement pursuant to this warranty, Supplier shall provide all labor, materials, parts and equipment to correct such defect at no expense to the City.
7. Supplier shall defend, indemnify and hold the City, its officials and employees harmless from all loss, damage, liability, demands, claims, causes of action, costs and expenses (including reasonable attorneys' fees) for injuries to persons (including death) or damage or destruction to property connected with or arising from the negligent acts or omissions, willful misconduct or misrepresentations of Supplier, its agents or employees in the performance of this Purchase Order.
8. City reserves the right to terminate this Purchase Order at any time in whole or in part even though the Supplier is not in default hereunder. In such event there will be made an equitable adjustment of the terms that is mutually satisfactory to the City and the Supplier. Upon receipt of any notice of such termination, the Supplier shall, unless such notice otherwise directs, immediately discontinue all work on the Purchase Order and deliver, if and as directed, to the City all completed and partially completed items and work in process. This section shall not limit or affect the right of the City to terminate this Purchase Order immediately upon Supplier's breach, in which case no equitable adjustment will be made.
9. City reserves the right to terminate this Purchase Order or any part hereof and reject delivery of items if delivery is not made when and as specified. The Supplier shall be charged for any direct losses, but not any consequential damages, sustained by the City by reason of such delay or failure, except losses caused by a delay for reasons beyond the Supplier's reasonable control. Direct losses shall include any costs to the City in excess of the Purchase Order price of obtaining items or services from other sources similar to those cancelled or rejected hereunder.
10. City shall pay to the Supplier the price(s) in the Purchase Order on delivery of the items or services and acceptance thereof by the City Manager or his designee, or upon completion of the work to be performed and acceptance thereof, as specified in the Purchase Order. Defective items not in accordance with the City's specifications shall be held for the Supplier's instructions at the Supplier's risk, and if the Supplier so directs, will be returned at the Supplier's expense.
11. Supplier shall not substitute items without written approval of the City Purchasing Agent or designee.
12. All royalties for patents, or charges for the use of patents which may be involved in any items furnished under this Purchase Order shall be included in the Purchase Order price.
13. In cases where a price subject to escalation has been agreed upon, all claims for such price escalation must be received by the City within 60 days after date of final shipment. The price escalation shall be shown as a separate item on the invoice. Unless an escalator clause has been shown as a specific part of this Purchase Order, the Supplier shall not be entitled to reimbursement for costs incurred due to escalation.
14. All items or services provided under this Purchase Order shall comply with the Safety Orders and Regulations of the California Division of Industrial Safety, Title 8, California Code of Regulations (CAL/OSHA) and all applicable OSHA regulations as well as all other applicable sections of California Code of Regulations. Supplier shall defend, indemnify and hold the City, its officials, and employees harmless from any loss, claim, cause of action, liability, cost or expense, including but not limited to fines, penalties, corrective measures, and attorney's fees, the City may sustain by reason of the Supplier's failure to comply.

15. Supplier shall keep confidential and not disclose or use in any way confidential business or technical information that the City may disclose in conjunction with this Purchase Order or the Supplier may learn as a result of entering City property to deliver items or services or to perform work hereunder.
16. Supplier shall not assign this Purchase Order or any part hereof or any payments due hereunder, nor delegate any duties without the City's prior written approval.
17. The remedies herein reserved shall be cumulative and additional to any other remedies at law or in equity. The waiver of any breach of this Purchase Order shall not be held to be a waiver of any other or subsequent breach. The City's failure to object to provisions contained in any communication from the Supplier shall not be deemed an acceptance of such provisions or a waiver of the provisions of this Purchase Order.
18. This Purchase Order shall not be amended, modified or rescinded, except by written agreement signed by the parties and expressly referring to this Purchase Order.
19. Any indebtedness of the Supplier to the City may, at the City's option, be credited against amounts owing by the City hereunder.
20. The Supplier shall indemnify, hold harmless, and defend the City, its officials and employees from any damage, loss, cost, liability, cause of action or expense, whether or not reduced to judgment, including reasonable attorney's fees, arising from any infringement or claimed infringement of any patent, trademark or copyright, or misappropriation of confidential information or trade secrets of any third party and based on the manufacture, sale or use of items supplied hereunder.
21. The Supplier shall furnish further itemization and breakdown of the Purchase Order price when requested by the City.
22. The Supplier and its subcontractor(s) shall not discriminate against any person in the performance of this Purchase Order and shall comply with applicable federal and state equal employment opportunity laws, ordinances, rules, and regulations. The Supplier and its subcontractor(s) shall not discriminate against any employee or applicant for employment or against any Subcontractor on the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, AIDS related condition, handicap, disabled or Vietnam Era Veteran status.
23. The Supplier shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances pertaining to the subject matter hereof.
24. The Supplier, its employees, and agents shall be considered independent contractors and not employees or agents of the City.
25. City's purchases are based on its actual needs and requirements; City is obligated hereunder to purchase only those items and those quantities that City needs and requires, regardless of any estimated quantities stated.

THE FOLLOWING ADDITIONAL CONDITIONS APPLY WHEN THE SUPPLIER IS TO PERFORM WORK ON THE PREMISES OF THE CITY:

26. If, during the work, the Supplier allows any indebtedness or lien to accrue for labor, equipment, or materials, which may become a claim against the City, the Supplier shall immediately, upon request from the City, pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond or otherwise and, in case of failure to do so, the City may withhold any money due the Supplier until such claim, indebtedness or lien is paid or may apply such money toward the discharge thereof; or in such event the City may, at its option, cancel this Purchase Order, take possession and control of the work, and complete the same or cause the same to be completed. Supplier shall pay to City the difference between the Purchase Order price and the actual cost to the City in completing or causing the work to be completed.
27. The Supplier shall carry on the work at Supplier's own risk until the same is fully completed and accepted and shall, in case of any accident, destruction or injury to the work or items before final completion and acceptance, repair or replace the work or items so injured, damaged or destroyed, at Supplier's own expense and to the satisfaction of the City. When items are furnished by others for installation or erection by the Supplier, the Supplier shall receive, unload, store, and handle same at site and become responsible therefor, as though such items were being furnished by the Supplier under the Purchase Order.
28. Supplier shall obtain and maintain at its expense, until completion of performance and acceptance by City, from an insurer admitted in California or with a rating of or equivalent to A:VIII by Best's, unless waived in writing by City's Risk Manager, the following insurance:
 - a. COMPREHENSIVE GENERAL LIABILITY naming City, its officials, employees and agents as additional insureds for injury to or death of persons or damage to or loss of property arising from or connected to Supplier's performance hereunder: \$1,000,000 combined single limit for each occurrence or \$2,000,000 general aggregate.
 - b. AUTOMOBILE LIABILITY: \$500,000 combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.
 - c. WORKER'S COMPENSATION: As required by the California Labor Code.

Self-insurance and self-insured retention must be approved in writing by City and protect City in the same manner and extent as if the policies had not contained retention. Each policy must be endorsed to state that coverage shall not be cancelled by either party or reduced in coverage except after 30 days prior written notice to City. Supplier shall furnish to City before performance Certificates of Insurance and original endorsements, with the original signature of one authorized by the insurer to bind coverage on its behalf, for approval as to sufficiency and form. This insurance shall not be deemed to limit Supplier's liability hereunder. Supplier shall require that all its subcontractors comply with this Section. City reserves the right to require complete certified copies of policies. If Supplier fails to furnish said insurance, City may terminate the Purchase Order for breach.